

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

SACKENA RUSSELL FOWLER,

Appellant,

V.

GT WILMINGTON USA and
UNEMPLOYMENT INSURANCE
APPEAL BOARD,

Appellees.

C.A. No. N22A-02-001 CLS

Date Submitted: May 24, 2022

Date Decided: May 24, 2022

Upon Appellant's Appeal from Unemployment Insurance Appeal Board.

REMANDED.

OPINION

Sackena Russell-Fowler, Wilmington, DE, 19804, *Pro Se*, Appellant.

Lauren E.M. Russell, Esquire, Young Conaway Stargatt & Taylor, LLP,
Wilmington, Delaware 19801, Attorney for Appellee, GT USA Wilmington LLC.

Victoria W. Counihan, Esquire, Delaware Department of Justice, Wilmington, Delaware, 19801, Attorney for Appellee, Delaware Division of Unemployment Insurance.

Victoria E. Groff, Esquire, Delaware Department of Justice, Wilmington,
Delaware, 19801, Attorney for Appellee, Unemployment Insurance Appeal Board.

SCOTT, J.

INTRODUCTION

Before this Court is Appellant Sackena Russell-Fowler's ("Ms. Russell-Fowler") appeal of the decision from the Delaware Unemployment Insurance Appeal Board (the "Board") disqualifying Ms. Russell-Fowler from benefits due to alleged misreporting for her other earnings. For the following reasons, the matter is **REMANDED**.

PROCEDURAL BACKGROUND

In February 2022, Ms. Russell-Fowler filed a notice of appeal with this Court regarding the Board's decision that she was ineligible for unemployment benefits due to misrepresenting her other earnings. Counsel involved in this case include the Delaware Division of Unemployment Insurance's (the "Division") counsel, and the Board's counsel. Upon filing her opening brief and moving to Quash, and subsequently revising the Motion to Quash the Board's decision, the Division's counsel, on May 6, 2022, represented to the Court that the case should be remanded because the Board committed legal error and there may have been a discrepancy between the earnings reported. The Division's counsel explained the Board used the incorrect statutes, 19 Del. C. §§ 3314(6) and 3325, and corresponding legal standards when affirming the Appeals Referee's Decision. The code sections improperly used define fraud for traditional unemployment insurance benefits and the recoupment of overpayments of benefits for fraud. Ms. Russell-Fowler did not receive traditional

unemployment, she, instead received Pandemic Unemployment Assistance (“PUA”) benefits. The legal standards for misrepresentation, including misreporting wages while receiving PUA benefits, and the consequences of such are defined by 20 C.F.R. § 625.14. The Board did not evaluate Ms. Russell-Fowler’s case under 20 C.F.R. 625 so its decision was made in legal error.

Additionally, the Division identified a potential discrepancy between the various computer systems that house data on PUA claims with respect to Ms. Russell-Fowler’s claim, particularly with respect to the other earnings she reported for some of the weeks included in the fraud determination that is the subject of this appeal.

On May 19, 2022, the Court heard arguments on regarding the representations made by Division’s Counsel and ordered the case be **REMANDED** back to the Board so that the Board can apply the correct legal standard to determine whether Appellant is disqualified from receiving unemployment benefits under PUA.

The Court sent a letter to Counsel requesting the proposed order applying the correct legal standard be submitted on May 24, 2022.

On May 24, 2022, Counsel for the Division filed a letter explaining there is a discrepancy in earnings due to the two computer systems that house the data on PUA claims. Counsel represents the vendor’s computer system contained the accurate

earnings data, contrary to what was previously reported to this Court. Additionally, the affidavit reporting that the earnings figures stated in the Claims Deputy, Appeals Referee and Board decisions in this case, and introduced into evidence by the Division in the record of this case are not accurate earnings figures for 5 of the 8 weeks listed in the decisions. The affidavit from Carolyn Nasser, Deputy Director of the Division, explains 3 weeks in the decisions have the same earnings data in both systems so accurately indicated a lack of reporting, 2 weeks have a different earnings number that would still constitute misreporting, and for 3 of the weeks the Ms. Russell-Fowler properly reported her earnings so those weeks should not have been included in the determination.

Based on the factual errors the Division recently discovered and the errors of law which prompted the discovery, the Division asks the Court, in a revised letter, to reverse the decision of the Board that disqualified Ms. Russell-Fowler because 5 weeks inaccurately allege that she misreported her other earnings (Weeks: 10/31/20, 11/28/20, 12/26/20, 1/2/21, 1/9/20).¹ With respect to the other 3 weeks that do not contain any factual discrepancies, the Division asks for remand to allow the Board to correct the error of law and apply the correct PUA standard.

¹ The Division's original letter identified different weeks which were alleged to be misreported by Ms. Russell-Fowler.

It seems the Board was not made aware of the factual issues of this case until May 24, 2022, as counsel for the Board has represented to the Court, she drafted the proposed corrected order applying PUA standards, as prescribed in the May 19, 2022, hearing and emailed it to Ms. Russell-Fowler, counsel for the Division of Unemployment Insurance, and counsel for GT Wilmington USA on Friday, May 20, 2022. In light of the factual discrepancies that have come to light, the proposed order dated May 20, 2022, holds no legal significance.

STANDARD OF REVIEW

On appeal from an administrative board, the Superior Court must determine if the Board's factual findings are supported by substantial evidence in the record and free from legal error.² Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”³ The Court must review the record to determine if the evidence is legally adequate to support the Board's factual findings.⁴ The Court does not “weigh evidence, determine questions of credibility or make its own factual evidence findings.”⁵

² *Unemployment Ins. Appeal Bd. v. Duncan*, 621 A.2d 340, 342 (Del.1993).

³ *Histed v. E.I. duPont de Nemours & Co.*, 621 A.2d 340, 342 (citing *Olney v. Cooch*, 425 A.2d 610, 614 (1981)).

⁴ *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del.1965).

⁵ *Id.* at 67.

DISCUSSION

Because the Division has represented that there are several factual errors contained in the order Ms. Russell-Fowler appealed, this Court must remand the order. This Court does not have the ability to make its own factual findings when reviewing an administrative appeal, it counts on the administrative agency to present accurate findings of fact so the Court can determine if the evidence is legally adequate to support the Board's findings. The earnings of 5 of the 8 weeks Ms. Russell-Fowler filed for benefits are inaccurate and of those 5 weeks, it is unclear which of those weeks are at issue because the Division proposed first the weeks affected were 8/15/20, 8/22/20, 8/29/20, 10/31/20, and 1/2/21 then a few hours later sent a correction letter indicating the weeks affected were 10/31/20, 11/28/20, 12/26/20, 1/2/21, 1/9/20. The Court is unable to properly review this appeal as reviewing this appeal would require the Court to develop the factual record and determine which weeks are at issue. The facts should be fully and accurately developed on the record.

Additionally, it has already been established, in the May 19, 2022 hearing, the Board applied incorrect statutes and corresponding legal standards when affirming the Appeals Referee's Decision because it relied on standards for traditional unemployment rather than PUA benefits. The legal standards for PUA must be applied to Ms. Russell-Fowler's case, therefore, the case is **REMANDED**.

On remand, the Board has represented to the Court and the Court expects it will hear and render a decision on Ms. Russell-Fowler's case as soon as possible. The Board shall provide that decision to Ms. Russell-Fowler by United States Postal Service mail, by overnight mail, and by email using the mailing and email addresses on file with the Delaware Department of Labor.

CONCLUSION

Therefore, for the foregoing reasons, the decision of the Board is **REMANDED** making Ms. Russell-Fowler's Motion to Quash moot.

IT IS SO ORDERED.

/s/ Calvin L. Scott
Judge Calvin L. Scott, Jr.